

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,	:	
	:	
-against-	:	No. 11 Cr. 755 (JFK)
	:	
JOVANNY RODRIGUEZ,	:	ORDER
	:	
<u>Defendant.</u>	:	
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JOHN F. KEENAN, United States District Judge:

On October 12, 2018, Defendant filed a pro se post-judgment motion seeking dismissal of the indictment and his release from prison. (ECF No. 392.) On May 28, 2019, the Court denied Defendant's motion as moot. (ECF No. 406.) On July 24, 2020, the Second Circuit ruled that the Court had jurisdiction to consider Defendant's motion, and it remanded the case for the Court to consider the merits of Defendant's request in the first instance. (ECF No. 440).


Defendant's conviction was affirmed on February 5, 2019, United States v. Rodriguez 761 F. App'x 53 (2d Cir. 2019), and cert was denied on November 4, 2019, Rodriguez v. United States, 140 S. Ct. 473 (2019). To date, Defendant has not filed a motion for habeas relief pursuant to 28 U.S.C. § 2255. Accordingly, the Court is inclined to construe Defendant's October 12, 2018 pro se post-judgment motion as a first § 2255 motion. However, before the Court may do so it must first (1) inform Defendant that it intends to recharacterize his

submission as a request for relief pursuant to § 2255; (2) warn Defendant that such recharacterization means that any subsequent § 2255 motion by Defendant will be subject to restrictions on "second or successive" motions; and (3) provide Defendant with an opportunity to withdraw or amend his submission so that it contains all of the § 2255 claims he believes he has. See Castro v. United States, 540 U.S. 375, 383 (2003).

Defendant is hereby NOTIFIED that the Court intends to recharacterize his October 12, 2018 pro se post-judgment motion, (ECF No. 392), as a first § 2255 motion, which means that any subsequent § 2255 motion Defendant wishes to file will be subject to the restrictions on successive petitions. However, Defendant shall have until November 4, 2020 (one year from the date on which his conviction became final) to withdraw or amend his October 12, 2018 pro se post-judgment motion so that it contains all of the § 2255 claims he wishes to raise.

SO ORDERED.

Dated: New York, New York
August 4, 2020



John F. Keenan
United States District Judge